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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/489,817 01/24/00 RAHMAN

M 674509-2022

020999  
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NEW YORK NY 10151

HM12/0322

EXAMINER

WILHELM WAIN, E ART UNIT PAPER NUMBER

1638 DATE MAILED:

03/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/489,817	RAHMAN ET AL.	
Examiner	Art Unit		
Elizabeth McElwain	1638		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on 24 January 2000.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 1-35 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

15)  Notice of References Cited (PTO-892) 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
16)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 19)  Notice of Informal Patent Application (PTO-152)  
17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 20)  Other: \_\_\_\_\_

Claims 9, 10, 14-19 and 23-26 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim dependency must be corrected prior to examination of the claims.

5        In addition, please note that two claims were submitted having the number 34, so the second claim has been renumbered as claim 35 by Rule 126 amendment.

10        Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I.        Claims 1-3, drawn to a transformed CC genome, classified in class 536, subclass 23.1, for example.
- II.        Claims 4-10, drawn to a transformed plant comprising an exogenous transparent seed coat gene, classified in class 800, subclass 298, for example.
- III.        Claims 11-17, drawn to a yellow seed with a transparent seed coat and specified levels of erucic acid and glucosinolates, classified in class 800, subclass 264, for example.
- IV.        Claim 18, drawn to use of a yellow seed, classified in class 800, subclass 260, for example.
- V.        Claim 19, to the extent that it is drawn to seed oil from yellow seeds, classified in class 426, subclass 601, for example.
- VI.        Claim 19, to the extent that it is drawn to seed meal from yellow seeds, classified in class 426, subclass 622, for example.

VII. Claims 20-26, drawn to a method for increasing levels of seed oil and protein and reducing fiber in a seed, classified in class 800, subclass 281, for example.

VIII. Claim 27, 34 and 35 drawn to a transformed *Brassica napus* plant, classified in class 800, subclass 306, for example.

5 IX. Claim 28, to the extent that it is drawn to seed oil, classified in class 426, subclass 601, for example.

X. Claim 28, to the extent that it is drawn to seed meal, classified in class 426, subclass 622, for example.

10 XI. Claims 29-31, drawn to use of an AA genome as a vector, classified in class 800, subclass 266, for example.

XII. Claim 32, drawn to a transparent seed coat encoded by a gene, classified in class 800, subclass 282, for example.

XIII. Claim 33, drawn to a transparent seed coat, classified in class 800, subclass 295, for example.

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The inventions are distinct, each from the other because:

The inventions of Groups I-XIII are distinct products and methods. The products of Groups I-III, V-VI, VIII- X and XII-XIII are each distinct products one from each of the others that differ chemically, structurally and functionally. In addition, the methods of Groups 20 IV, VII and XI differ one from each of the others in requiring different components and method steps, as well as differing in their starting and end-products. Furthermore, the

methods of Groups IV, VII and XI are distinct from each of the products of Groups I-III, V-VI, VIII- X and XII-XIII, wherein each of the products does not require any of the methods, and the products can each be used in different methods. Thus the inventions of Groups I-XIII are each capable of being separately made, independently used and the patentability of one 5 would not render the other obvious or unpatentable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

10 Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

15 Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

20 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Tuesday through Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached at (703) 308-4310. The fax phone number for this Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

10      Elizabeth F. McElwain, Ph.D.  
          March 18, 2001

ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1600  
*Elizabeth F. McElwain*